

November 5, 2007

EX PARTE – VIA ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. Section 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas, WC Docket No. 06-172*

Dear Ms. Dortch:

Covad Communications Group, Inc. (“Covad”) submits this *ex parte* in the above-referenced proceeding to reinforce concerns regarding the negative effects unbundled UNE forbearance would have on consumer access to broadband services. We encourage the Commission to deny Verizon forbearance because of its detrimental impact on competition and consumers in both the wholesale and the retail broadband markets.

Among others, EarthLink, Inc. (“EarthLink”) has placed in the record compelling arguments regarding the potential harms of UNE forbearance on broadband in America. For example, restricting access to UNE loops through Section 251(c)(3) forbearance would significantly impede broadband competition, resulting in stifling broadband choices and increasing broadband prices for both mass market and enterprise broadband consumers.¹ The negative effects of forbearance would extend far beyond the lack of UNE-based competition and consumer choice in the six MSAs currently at issue. Indeed, granting forbearance would harm broadband competition and innovation both nationwide and in the United States as compared to the rest of the world.²

¹ See Opposition of EarthLink, Inc. and New Edge Network, Inc., WC Docket No. 06-172 (filed Mar. 5, 2007) (“*EarthLink Opposition*”).

² Ex Parte Notice of EarthLink, Inc., WC Docket No. 06-172 (filed Oct. 30, 2007) (“*EarthLink Ex Parte*”) available at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519808166.

UNE loops are a critical component in the availability of affordable broadband and bundled communications services for mass market consumers. Using UNE loop-based products purchased from Covad, EarthLink is able to provide high-speed broadband services that compete directly with broadband services offered by Verizon and cable companies in the six MSAs at issue. As noted by

EarthLink, “these UNE-based services are functionally equivalent to a ‘third pipe’ into homes.”³ Covad fully agrees with EarthLink and urges the Commission to give great weight to the competitive counterbalance and consumer benefits such services provide.

The UNE loop-based services Covad provides to EarthLink enable EarthLink to provide competitively-priced innovative services to consumer. These services also pressure Verizon and others to offer similar services on more reasonable terms and conditions.⁴ As EarthLink’s opposition emphasizes:

The availability pursuant to section 251(c) of this functional third pipe pushes both Verizon and the cable company to improve service and value to consumers, while constraining their ability to engage in anticompetitive behavior such as raising rivals’ costs, conducting price squeezes or blocking, degrading or otherwise impairing Internet applications.⁵

Absent the availability of Section 251-priced UNE loops or equivalently priced loops, neither EarthLink nor Covad would likely be able to continue to provide their current consumer broadband services at prices that meaningfully compete with the services offered by Verizon and the cable companies. Accordingly, a Commission decision to grant the forbearance requested by Verizon would ultimately result in the loss of an essential third competitive option for consumers.

As EarthLink observes in its recent *ex parte*, Verizon has utterly failed to demonstrate how UNE forbearance would satisfy the Section 10 standard, the *Omaha* standard, or in any way be in the public interest.⁶ Indeed, Verizon turns the Commission’s established policy on its head by fabricating support for forbearance from items such as the *TRO* and the *Wireline Broadband Order*, which assumed that Section 251-priced UNEs would continue to be available.⁷ Covad agrees with EarthLink that if the Commission grants Verizon’s request, it would “backtrack” on the “new wires, new rules” approach taken in the *TRO*.⁸ Verizon would essentially have the Commission

³ *EarthLink Opposition* at 6.

⁴ *Id.*

⁵ *Id.* at 7.

⁶ *EarthLink Ex Parte* at 5-6.

⁷ *See* Reply Comments of Verizon, WC Docket No. 06-172, at 31-32 (filed Apr. 18, 2007). *See also EarthLink Ex Parte* at 5.

⁸ *EarthLink Opposition*, at 41, *Earthlink Ex Parte* at 9.

revisit most of the elements of the detailed *TRO*, which would lead to further regulatory proceedings and potential litigation, both of which create more uncertainty for competitive carriers, as well as their investors and customers. Indeed, it is clear that changing the rules on “old wires” would immediately hamper competition in advanced services.

Verizon also tries to ignore intervening events indicating that the broadband market has changed in a competitively deleterious manner (*e.g.*, via industry consolidation and the failure of intermodal broadband alternatives to realistically live up to the Commission’s expectations). Access to cost-based priced loops enables competitive carriers like EarthLink, Covad, and others to play a

vital, real, and timely role in the broadband market and assist in the realization of Section 706 of the Act.⁹ By combining UNE loops with their own DSLAMs and other electronics, UNE-L competitors can provide services that are independent from the ILEC or the cable company, thereby furthering the development of advanced telecommunications services and providing real choices in the here and now.

The bottom line is that widespread UNE loop deregulation under the guise of forbearance could very well give rise to a “tipping point” that eviscerates the very spirit of the Telecommunications Act of 1996, leading to profound and lasting harm to broadband consumers and competition in the United States. We urge the Commission to “forbear” from making this mistake.

Respectfully submitted,

/s/ Angela Simpson
Angela Simpson
Director, Government Affairs

⁹ 47 U.S.C. § 706.